UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,915	01/15/2002	Peter K. Lyons	23452-150	5007

			EXAMINER
29315	7590	11/02/2005	BULLOCK JR, LEWIS ALEXANDER

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ART UNIT	PAPER NUMBER
2195	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/044,915	LYONS, PETER K.
	Examiner	Art Unit	
	Lewis A. Bullock, Jr.	2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>8/4/05</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-21</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-21</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>04 August 2005</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 1, 3-5, 7, 8, 10-12 and 14 are rejected under 35 U.S.C. 102(e) as being

anticipated by SAKANISHI (U.S. Patent 6,678,888).

As to claim 1, SAKANISHI teaches a system for enabling updates (automatic

software updates) on a running application server (intermediate control system), the

system comprising: an application server (intermediate control system) that hosts one

or more applications (software) used by one or more clients (controlled system); a

deployer (upper control system) that coordinates an update to the one or more

applications (software) on the application server (intermediate control system), the

deployer further comprising: a configuration file (software information file) that assigns a

priority (priority level) to the update and coordinates the update to the one or more

applications (software) on the application server (intermediate control system) based, at

least in part, upon the assigned priority (priority level) (via using the file to generate a

table that compares the updates version/priority level of the software to the current

executing version/priority level to see if the software should be downloaded) (col. 7,

lines 13-19; col. 5, lines 19-62; col. 5, line 63 – col. 6, line 10; col. 8, line 6-28; col. 8,

lines 43-61). It is inherent to the teachings of SAKANISHI that since the updates are

performed automatically as disclosed by the system or the defined steps that the update

is performed without restarting the a server.

As to claim 3, SAKANISHI teaches a method for updating an application

(automatic software update) on an application server (intermediate control system),

wherein the application is used by one or more client devices (controlled systems), the

method comprising: determining that an update is available for the application on the

application server (via an upper control system determining that software needs to be

updated / determines a new software exists); signaling the application server that the

update is available (via communicating an indication of a new piece of software / or

sending the software information file); determining a priority level (version / priority level)

associated with the update; deciding whether to proceed with the update based, at least

in part on the priority for the update (via comparing the versions of the software), and if

the decision is to proceed; adjusting the application so that the update may proceed (via

determining affected dependent software based upon the update and packaging those

components also or use a different version of the software update); updating the

application and signaling the application server (via applying the update by using the file

to generate a table that compares the updates version/priority level of the software to

the current executing version/priority level to see if the software should be downloaded)

(col. 7, lines 13-19; col. 5, lines 19-62; col. 5, line 63 – col. 6, line 10; col. 8, line 6-28;

col. 8, lines 43-61). It is inherent to the teachings of SAKANISHI that since the updates are performed automatically as disclosed by the system or the defined steps that the update is performed without restarting the a server.

As to claim 4, SAKANISHI teaches the step of determining a priority comprises: reading the priority (priority level) assigned to the update by the deployer (upper control system) (via generating a table that indicates / compares the updates version/priority level of the software to the current executing version/priority level to see if the software should be downloaded) (col. 7, lines 13-19; col. 5, lines 19-62; col. 5, line 63 – col. 6, line 10; col. 8, line 6-28; col. 8, lines 43-61), wherein the assigned priority is based, at least in part, upon a predetermined configuration (col. 6, line 10-27).

As to claim 5, SAKANISHI teaches the deployer (upper control system) that coordinates an update to an application (software update) running on an application server (intermediate control system) wherein the application is used by one or more clients (controlled systems), the deployer comprising: a configuration file (software information file) that assigns a priority (version / priority level) to the update and pushes the update to the application server based, at least in part, upon the assigned priority (via using the file to generate a table that compares the updates version/priority level of the software to the current executing version/priority level to see if the software should be downloaded) (col. 7, lines 13-19; col. 5, lines 19-62; col. 5, line 63 – col. 6, line 10; col. 8, line 6-28; col. 8, lines 43-61).

As to claim 7, SAKANISHI teaches a signaler to signal the application server
when the update is complete (via applying the update by using the file to generate a
table that compares the updates version/priority level of the software to the current
executing version/priority level to see if the software should be downloaded) (col. 7,
lines 13-19; col. 5, lines 19-62; col. 5, line 63 – col. 6, line 10; col. 8, line 6-28; col. 8,
lines 43-61).

As to claim 8, refer to claim 1 for rejection.

As to claims 10 and 11, reference is made to a processor readable medium that
corresponds to the method of claims 3 and 4 and is therefore met by the rejection of
claims 3 and 4 above.

As to claims 12 and 14, refer to claims 5 and 7 for rejection.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 2, 6, 9, 13, 15 and 17 are rejected under 35 U.S.C. 103(a) as being

unpatentable over SAKANISHI (U.S. Patent 6,678,888) in view of O'NEILL (U.S. Patent

Application Publication 2004/0215755).

As to claims 2 and 15, SAKANISHI substantially discloses the invention above.

However, SAKANSHI does not teach using a duplication storage space first. O'NEILL

teaches a multi-tier software updating system that uses a duplicate application storage

space (memory of update generator device / storage components of the update server

array / update device servers) that communicates with the deployer (update generator),

wherein the update to the one or more applications (software updates) is first performed

on the duplicate application storage space (via the update generator compares the

versions of the software first in order to create an instruction set for transmitting to the

update array / update servers memory that substantially reduces the update package

wherein the update array / servers memory acts as gateways which transfer the update

packages to clients) (pg. 4, para. 0043 – pg. 5, para. 0047; pg. 6, para 0059 – pg. 7,

para 0061). Therefore, it would be obvious to one skilled in the art at the time of the

invention to combine the teachings of SAKANISHI with the teachings of O'NEILL in

order to facilitate a system that generates and distributes updates that are of reduced

size to allow for more rapid acquisition (pg. 2, para. 0011-0012).

As to claim 9, refer to claim 2 for rejection.

As to claim 17, SAKANISHI substantially discloses the invention above.

However, SAKANISHI does not teach the cited polling functionality. O'NEILL teaches a

multi-tier software updating system wherein the determining that an update is available

comprises: polling a storage location (memory) to check for the presence of an update

(via the update generator being alternatively equipped with the ability to generate and

provide a plurality of update packages prior to receiving the identity information, by

retrieving from memory or storage an archived version of the desired update package /

the update component scheduled to operate automatically, polling the server manifest

and identifying a difference between the existing version of the file and the latest version

available on the update device server) (pg. 4, para. 0042; pg. 8, para. 0069). Therefore,

it would be obvious to one skilled in the art at the time of the invention to combine the

teachings of SAKANISHI with the teachings of O'NEILL in order to facilitate a system

that generates and distributes updates that are of reduced size to allow for more rapid

acquisition (pg. 2, para. 0011-0012).

As to claim 6, SAKANISHI substantially discloses the invention. However,

SAKANISHI does not teach the poller. O'NEILL teaches a multi-tier software updating

system having a poller to poll a storage location (memory) and determine whether

modified application files exists (via the update generator being alternatively equipped

with the ability to generate and provide a plurality of update packages prior to receiving

the identity information, by retrieving from memory or storage an archived version of the

desired update package / the update component scheduled to operate automatically,

polling the server manifest and identifying a difference between the existing version of

the file and the latest version available on the update device server) (pg. 4, para. 0042;

pg. 8, para. 0069). Therefore, it would be obvious to one skilled in the art at the time of

the invention to combine the teachings of SAKANISHI with the teachings of O'NEILL in

order to facilitate a system that generates and distributes updates that are of reduced

size to allow for more rapid acquisition (pg. 2, para. 0011-0012).

As to claim 13, refer to claim 6 for rejection.

5.   Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over

SAKANISHI (U.S. Patent 6,678,888).

As to claim 16, SAKANISHI teaches applications having priority levels (col. 7,

lines 13-19; col. 5, lines 19-62; col. 5, line 63 – col. 6, line 10; col. 8, line 6-28; col. 8,

lines 43-61). However, SAKANISHI does not teach how priorities are based. Official

Notice is taken in that it is well known in the art that priorities can be based on the type

of software, i.e. user applications, system programs, etc., and therefore would be

obvious in view of SAKANSISHI that the type of application would contribute to its

priority and how its updates are performed.

6.   Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over

SAKANISHI (U.S. Patent 6,678,888) in view of FLETCHER (U.S. Patent 6,009,274).

As to claims 18-21, SAKANISHI substantially discloses the invention above.

However, SAKANISHI does not teach the client device handling of the update.

FLETCHER teaches client devices (end systems) handling of application updates

(software) have a priority wherein some components are in used by either halting the

application, prevented access by not currently using client devices and halted when

current client devices stop using the application, or halting the application when no

client is using the application (via updating the operating system registry information to

point to the new file components such that the next time the operating system is

rebooted the modified registry information is used by the operating system while

updates to other components are made immediately) (col. 12, line 64 – col. 13, line 25).

Therefore, it would be obvious to one skilled in the art at the time of the invention to

combine the teachings of SAKANISHI with the teachings of FLETCHER in order to

facilitate "on the fly" use of two directory paths for those components that cannot be

dynamically updated (col. 5, lines 44-52).

Response to Arguments

7.   Applicant's arguments with respect to claims 1-21 have been considered but are

moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Lewis A. Bullock, Jr. whose telephone number is (571)

272-3759. The examiner can normally be reached on Monday-Friday, 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Meng An can be reached on (571) 272-3756. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

October 31, 2005

LEWIS A. BULLOCK, JR.
PRIMARY EXAMINER